

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:MSR:KSM:KCY:TL-N-6467-98
DPKensinger

date: March 25, 1999

to: Director, Kansas City Service Center
Attn: Marsha Artholee, Technical/PRP Unit
P.O. Box 24551, Stop 6800
Kansas City, Missouri 64131

from: Assistant District Counsel, Kansas-Missouri District, Kansas City

subject: Injured Spouse Claims--Statute of Limitations
Taxpayers: [REDACTED]

This refers to your request for advice on whether an injured spouse claim, Form 8379, is a claim for refund within the meaning of I.R.C. §§ 7422 and 6532.

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

SIGNIFICANT

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ISSUE

Whether a claim for injured spouse relief is a claim for refund subject to the provisions of sections 7422 and 6532 or a claim controlled exclusively by 18 U.S.C. § 2401.

DISCUSSION

The taxpayer filed a joint income tax return with his spouse for the taxable year [REDACTED]. The return claimed a refund in income tax. The taxpayer's spouse was indebted to another federal agency. As a result the Service offset the amount of the claimed refund to the debt owed the other federal agency pursuant to section 6402(d).

The taxpayer filed an Injured Spouse Claim and Allocation, Form 8379, in which the taxpayer sought to obtain the amount offset to the debt owed the other federal agency. This claim was submitted on the basis that the debt owed to the other federal agency was the debt of the taxpayer's spouse rather than the taxpayer's obligation. Thus, the taxpayer submitted the claim on the basis that a portion of the refund belonged to him and that this portion of the refund should not have been offset to pay the obligation of the spouse to the other federal agency.

The Service did not properly process this claim for injured spouse relief. The claim showed it was filed for [REDACTED]; the Service, however, treated this claim as a claim for [REDACTED] and allowed a refund in the amount of \$[REDACTED]. If the Service had processed the claim as a claim for injured spouse relief for [REDACTED] the amount of the refund would be over \$[REDACTED]. The Service has never issued a disallowance letter to the taxpayer with respect to the injured spouse claim (Form 8379).

When spouses file a joint return the Service generally issues the refund check in the name of the spouses jointly. There are exceptions to this practice, however. If one of the spouses owes delinquent child support and the state has notified the Service of the delinquency, the Service will issue the refund to the state. I.R.C. § 6402(c). If one of the spouses owes a past due legally enforceable debt to another federal agency, the Service will issue the refund to the agency to which the spouse is indebted. I.R.C. § 6402(d). In these situations the Service issues the entire amount of the refund to the state or the other federal agency to which one of the spouses is indebted.

By applying the entire amount of the refund to the debt of the spouse who is delinquent in paying child support or debts to other federal agencies, the Service may be taking property of the non-liaable spouse and applying it to the debts of the other spouse.

Rev. Rul. 74-611, 1974-2, C.B. 399 held that when a husband and wife file a joint return each spouse has a separate interest in the jointly reported income and a separate interest in any overpayment. Rev. Rul. 80-7, 1980-1 C.B. 296, provides a formula for determining the amount of a refund which is allocable to each of the spouses. Section 6402(c) and (d) are applied without regard to Rev. Rul. 74-611 or Rev. Rul. 80-7. If the non-liable spouse wants relief from the application of the refund to the debts of the liable spouse, the non-liable spouse must seek relief by filing a claim for injured spouse relief. The non-liable spouse files this claim on Form 8379, Injured Spouse Claim and Allocation.

Section 7422(a) provides that "no suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected . . . until a claim for refund or credit has been duly filed . . ." Section 6532(a) provides:

(1) General rule. No suit or proceeding under section 7422(a) for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary renders a decision thereon within that time, nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the secretary to the taxpayer of a notice of disallowance of the part of the claim to which the suit or proceeding relates.

Under section 7422 a prerequisite for a refund suit is a claim for refund. Section 6532(a) then establishes the time frames within which the refund suit must be filed. Section 6532 provides that the taxpayer may not file suit until at least 6 months after the claim is filed. The other time requirement in section 6532 for the refund suit is that the taxpayer must file suit within 2 years after the Service mails the notice of claim disallowance. If a notice of claim disallowance is not issued, there is no time limitation with respect to the filing of suit.

In the instant situation the injured spouse filed a claim for injured spouse relief and the Service has never issued a notice of claim disallowance. Therefore, if the claim for injured spouse relief is a claim for refund within the meaning of sections 7422(a) and 6532(a), then the claimant may bring suit at any time and the

Service should allow the claim as it has been determined to be otherwise meritorious.¹

Oatman v. United States, 34 F.3d 787 (9th Cir, 1994), rev'd and remanding 814 F. Supp. 912 (D. Idaho 1993) controls whether a claim for injured spouse relief is a claim for refund. In Oatman, the taxpayer filed a class action refund suit to obtain her share of an overpayment that had been applied to her husband's past due child support liabilities. The Government argued that the District Court was without jurisdiction to hear the case because section 6402(e) precludes refund suits for amounts the Service credits under either section 6402(c) or (d). Section 6402(e) provides:

No court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain to review a reduction authorized by subsection (c) or (d). No such reduction shall be subject to review by the Secretary in any administrative proceeding. No action brought against the United States to recover the amount of any such reduction shall be considered to be a suit for refund of tax.

The District Court found this argument persuasive and dismissed the suit for lack of jurisdiction. The taxpayer appealed.

On appeal the Government modified its position. The Government determined that section 6402(e) was limited in scope and only precluded actions brought by or on behalf of the liable spouse, not the injured spouse. Accordingly, the Government confessed error and conceded on brief that the District Court had jurisdiction to consider the taxpayer's refund suit for injured spouse relief. The decision of the Court of Appeals for the Ninth Circuit, cited above, reflects this conclusion. Thus, it is the government's

¹The alternative position is that the claim for injured spouse relief is a claim against the United States under 28 U.S.C. § 2401(a), which provides that suit must be filed within 6 years of the date the right of action accrues. Further, there is no provision in section 2401(a) extending the period for filing suit when the claimant files a claim. As noted above, section 6532 provides that the period for filing suit is extended indefinitely when the taxpayer files a claim and the Service does not act on the claim. In the instant situation the taxpayer filed a claim and the Service has never denied the claim; thus, if section 6532 applies the taxpayer may file suit. On the other hand, if 28 U.S.C. § 2401 applies, filing the claim does not extend the period for filing suit (the 6-year period is an absolute period which cannot be extended).

position that suits for injured spouse relief may be brought as refund suits. It follows, therefore, that if a taxpayer files a claim for refund based on "injured spouse" relief, he or she will have two years pursuant to section 7422(a) to file a refund suit from the time the claim is denied by a certified notice of claim disallowance. If the Service does not issue the notice of disallowance, the period for filing suit is indefinite.

In the instant situation, the Service has never issued the taxpayer a notice of claim disallowance. The taxpayer could, therefore, file a refund suit. Because the taxpayer could file a refund suit and you have determined that the claim is otherwise meritorious, the claim should be allowed.

CONCLUSION

A claim for injured spouse relief is a claim for refund subject to the provisions of sections 7422 and 6532.

As no further action is currently required, we are closing our file. If you have any questions, contact the undersigned at (816) 283-3046, ext. 164.

(Signed) Dale P. Kensinger

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